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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MICHELE PAGE,

Plaintiff,

v.

SPRINT COMMUNICATIONS,

Defendant.

Case No. 2:16-cv-03007-JCM-GWF

**ORDER**

This matter is before the Court on Plaintiff's Application to Proceed *in Forma Pauperis* (ECF No. 1), filed on December 28, 2016.

**BACKGROUND**

Plaintiff alleges that she applied for "USF Telephone Service" on July 5, 2016 and that Sprint Communications denied her such telephone service for a period of three months. She further alleges that on August 22, 2016, she received a cellular telephone, but she was unable to use it because of a malfunctioning battery. Plaintiff states that she qualified for the telephone service because she receives food stamps. She requests nominal damages, punitive damages, and damages for pain and suffering.

**DISCUSSION**

**I. Application to Proceed *in Forma Pauperis***

Plaintiff filed this instant action and attached a financial affidavit to her application and complaint as required by 28 U.S.C. § 1915(a). Reviewing Plaintiff's financial affidavit pursuant to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. As a result, Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

**II. Screening the Complaint**

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to

1 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which  
2 relief may be granted, or seeks monetary relief from a defendant/third party plaintiff who is  
3 immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be  
4 dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a  
5 doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to  
6 relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A complaint may be  
7 dismissed as frivolous if it is premised on a nonexistent legal interest or delusional factual  
8 scenario. *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989). Moreover, “a finding of factual  
9 frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly  
10 incredible, whether or not there are judicially noticeable facts available to contradict them.”  
11 *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under §  
12 1915(e), the plaintiff should be given leave to amend the complaint with directions as to curing  
13 its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be  
14 cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

15 The Court shall liberally construe a complaint by a pro se litigant. *Eldridge v. Block*, 832  
16 F.2d 1132, 1137 (9th Cir. 2007). This is especially important for civil rights complaints. *Ferdik*  
17 *v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). However, a liberal construction may not be  
18 used to supply an essential element of the claim absent from the complaint. *Bruns v. Nat’l*  
19 *Credit Union Admin.*, 12 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Board of Regents*, 673  
20 F.2d 266, 268 (9th Cir. 1982)).

21 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a  
22 complaint for failure to state a claim upon which relief can be granted. Review under Rule  
23 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of*  
24 *America*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a “short  
25 and plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P.  
26 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not  
27 require detailed factual allegations, it demands “more than labels and conclusions” or a  
28 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937,

1 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true  
2 all well-pled factual allegations contained in the complaint, but the same requirement does not  
3 apply to legal conclusions. *Iqbal*, 129 S.Ct. at 1950. Mere recitals of the elements of a cause of  
4 action, supported only by conclusory allegations, do not suffice. *Id.* at 1949. Secondly, where  
5 the claims in the complaint have not crossed the line from plausible to conceivable, the  
6 complaint should be dismissed. *Twombly*, 550 U.S. at 570.

### 7 **III. Instant Complaint**

8 Although Plaintiff provides some factual description of the basis of her claims, her  
9 complaint does not sufficiently allege the legal theory under which she is pursuing her claim.  
10 Additionally, she does not state the grounds for the Court’s jurisdiction in her complaint. Rule  
11 8(a)(1) of the Federal Rules of Civil Procedure states that a “claim for relief must contain ... a short  
12 plain statement of the grounds for the court’s jurisdiction.” Fed. R. Civ. P. 8(a)(1). The burden  
13 of proving jurisdiction rests on the party asserting jurisdiction. *See McNutt v. Gen. Motors*  
14 *Acceptance Corp.* 298 U.S. 178, 182–83 (1936).

15 Federal district courts are courts of limited jurisdiction, deriving their power to hear cases  
16 from specific congressional grants of jurisdiction. *United States v. Sumner*, 226 F.3d 1005, 1009  
17 (9th Cir. 2000). Limited jurisdiction means that federal courts (1) possess only that power  
18 authorized by the Constitution or a specific federal statute and (2) do not have jurisdiction over a  
19 matter simply because the alleged wrong occurred in the same city, county, or state in which the  
20 court sits. *See* U.S. Const. art. III, § 2, cl. 1. Generally, subject matter jurisdiction may derive  
21 from diversity of the parties, which are “civil actions where the matter in controversy exceeds the  
22 sum or value of \$75,000 ... and is between citizens of different States,” or from claims involving  
23 a federal question, which are “civil actions arising under the Constitution, laws, or treaties of the  
24 United States.” *See* 28 U.S.C. § 1331; 28 U.S.C. § 1332.

25 Plaintiff’s allegations are inadequate. She fails to allege any legal theory and fails to allege  
26 that this Court has subject matter jurisdiction over her claims. The Court, therefore, will dismiss  
27 Plaintiff’s complaint with leave to amend. Plaintiff is advised that she must provide the court with  
28 a proper factual and legal basis for her claims in her amended complaint.

1 If Plaintiff elects to proceed in this action by filing an amended complaint, she is informed  
2 that the court cannot refer to a prior pleading in order to make her amended complaint complete.  
3 Local Rule 15–1 requires that an amended complaint be complete in itself without reference to any  
4 prior pleading. This is because, as a general rule, an amended complaint supersedes the original  
5 complaint. See *Valdez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir. 2011); see *Loux v. Rhay*,  
6 375 F.2d 55, 57 (9th Cir.1967). Once Plaintiff files an amended complaint, the original pleading  
7 no longer serves any function in the case. Therefore, in an amended complaint, as in an original  
8 complaint, each claim and the involvement of each defendant must be sufficiently alleged.  
9 Plaintiff is advised that litigation will not commence upon the filing of an amended complaint.  
10 Rather, the Court will need to conduct an additional screening of the amended complaint pursuant  
11 to 28 U.S.C. § 1915(e). If Plaintiff fails to file an amended complaint or fails to cure the  
12 deficiencies identified above, the Court will recommend that the complaint be dismissed with  
13 prejudice. Accordingly,

14 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed *in Forma Pauperis*  
15 is **granted**. Plaintiff shall not be required to pre-pay the full filing fee of four hundred dollars  
16 (\$400.00).

17 **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to  
18 conclusion without the necessity of prepayment of any additional fees or costs or the giving of  
19 security therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the  
20 issuance of subpoenas at government expense.

21 **IT IS FURTHER ORDERED** that Plaintiff's Complaint be **dismissed** without prejudice  
22 with leave to amend. Plaintiff shall have until **July 9, 2018** to file an amended complaint  
23 correcting the noted deficiencies.

24 Dated this 8th day of June, 2018.

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26   
27 GEORGE FOLEY, JR.  
28 UNITED STATES MAGISTRATE JUDGE